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A

STATEMENT,

BY

JAMES C. BIDDLE

AND

WILLIAM M. MEREDITH,

OF THE PHILADELPHIA BAR.

PHILADELPHIA—JUNE, 1822.

A STATEMENT.

It is the design of these pages to vindicate our reputation, and if not completely to justify our conduct, to show that a punishment has been inflicted upon us altogether disproportioned to our offence. There are probably few who have not heard that for a contempt of the court of Oyer and Terminer we were committed to jail for twenty-four days. There are also very few who are acquainted with the circumstances which occasioned a punishment of so extraordinary a character. Various efforts have been made to excite the resentment of the public against us. The most inconsistent, distorted, and exaggerated accounts have been widely circulated, which require explanation and correction. The extreme severity of the punishment alone would render a defence of our conduct due to our friends and ourselves. Members of our bar have never been imprisoned for contempts of the kind committed by us. Several instances have occurred in which they have been committed for a short time to the custody of the sheriff. This has only taken place in extreme cases, for the purpose of restoring immediate order, when all milder means have failed, and has only been continued until that object was attained. When therefore it is imposed for so long a time it is calculated to produce very unfavourable impressions, and if all the circumstances are not known, may cause it to be believed hereafter that a crime and not an indiscretion was committed. These considerations will, we hope, justify us in making this communication to the public.

It is assuredly an object of vast importance, that the dignity of courts should be preserved unimpaired. Any attempt to deprive them of that respect to which they are entitled, is unquestionably deserving of censure and punishment. All are equally interested in the firm and independent administration of justice, and all must disapprove of the conduct of those who wilfully and without strong provocation are guilty of disrespect to a Court. It is especially incumbent on the gentlemen of the bar to support its dignity and respect its authority:—This we knew and felt. At the same time there are solemn duties due to those who have confided important interests to their care, which it is imperative on them to discharge with firmness and without yielding to any apprehension of personal danger. It is truly lamentable that in this country the security of the advocate should ever be jeoparded by the fearless and independent performance of his professional duty. Perhaps, urged on by too much zeal for the unfortunate and friendless beings who had intrusted to us the defence of their lives, and by the strong excitement which prevailed on all sides, we were at the moment hurried into a warmth of expression and manner which on reflection we could not justify. We were prepared the next day, if an opportunity had been afforded, to have disavowed any intentional disrespect to the Court, and to have made such further acknowledgment as on consideration the circumstances in our opinion required. The Court refused to hear us. They, in violation of their official duty and the first principles of law and justice, silenced our respectful attempts to address them. They denied to us the enjoyment of a right guaranteed by the constitution to the meanest and most degraded criminal. The severity of the sentence—the impassioned manner in which it was pronounced upon us—the repeated and unfeeling directions which were given by the President of the Court to its officers to carry the sentence into immediate execution—all rendered an acknowledgment afterwards impossible. We cannot here refrain from a public expression of our thanks to the officers on whom this duty devolved, for the delicacy and propriety of their conduct, made more strikingly apparent by so obvious a contrast.

To give a clear understanding of the events which caused our imprisonment, and to render the narrative perfect, it is neces-

sary briefly to notice the proceedings of the Court on several preceding days. We have aimed at fairness; and at the same time that we have studied to avoid unnecessarily swelling our statement, we trust that we have omitted no material circumstances either in our favour or against us.

On the first day of May, A. D. 1822, James Cook, alias Joseph Oliver, Matthew Caldwell, alias James Caldwell, and Thomas Ross, were put on their trial for the murder of Samuel Alwine. Mr. Kittera conducted the prosecution, and Mr. Dunlap, Mr. Biddle, and Mr. Meredith the defence. It would be manifestly improper to state the evidence now. The Jury went out at half past nine in the evening, having heard the charge of the Court: they came into court again at half past ten, but had not agreed upon their verdict. At this time, in answer to a question from one of the jurors, Judge Hallowell said, "Gentlemen, we tell you that you have the physical power to judge of the law;" Mr. Meredith requested his Honour to inform the Jury that they had the *legal* power to decide upon the law as well as the fact: Judge Hallowell replied, "That it was their duty to take the law from the Court; that *he never would tell a Jury that they had a legal power to judge of the law;* that this opinion was formed upon deliberation and mature reflection, and that it would stand the test of investigation." Mr. Biddle observed, that his legal education had taught him to believe that the law was different, and requested his Honour to make a note of his charge. After a lapse of some minutes, Judge Hallowell said, "Gentlemen, the Court tell you that you have the *right* to judge of the law." The Jury then retired, and the following extract from the records of the Court will show the subsequent proceedings: "Returned at twelve, midnight, said they could not agree, and that there was no prospect of their agreeing, and requested earnestly to be discharged. The Court sent them out, and adjourned until eight o'clock Thursday morning, at which time they came in and said, they had not agreed, and never could agree; Henry Pratt, the foreman, declaring, that he, for his part, would perish before he agreed to a verdict which was against his judgment. They were, however, sent out again. The Court adjourned until ten o'clock, A. M. At half past twelve they returned, and declared they had not agreed,

nor was there the least probability; they might as well all attempt to see out of the same eyes. The Jury declared, that if permitted, they were ready to give a verdict as to two of the prisoners, but the Court declined to receive it, and on full and deliberate consideration, without and against the consent of the prisoners' counsel, they were by a majority of the Court discharged."

On Monday, May 6, came on the case of the same defendants, for an assault and battery on Mary Shellum, with intent to murder. The same counsel on both sides as in the foregoing case. Mr. Biddle moved to postpone the case, on account of the excitement which existed against the defendants. The Court denied the motion. The prisoners' counsel then challenged the jurors for cause, as they were called, but the challenges were not determined before the Court adjourned. In the afternoon, in consequence of some intimations which had fallen from the Court in the morning, Mr. Dunlap renewed the motion for a postponement, which was granted by the Court on the ground of the excitement existing against the prisoners, in consequence of the circumstances of the former trial. The Attorney General then intimated, that he would proceed to try the defendants on an indictment for burglary which had been found against them, together with one Emery, who had been tried and acquitted at the previous Court of Oyer and Terminer.

The next morning, Tuesday, May the 7th, the following article appeared in Poulson's paper:

Philadelphia, Tuesday Morning, May 7, 1822.

We are indebted to a respectable Friend for the subsequent Article of *Law Intelligence*.—In our paper of to-morrow we shall publish, from the same source, the transactions of the Court of Oyer and Terminer on Thursday and Friday last.

FOR POULSON'S AMERICAN DAILY ADVERTISER.

COURT OF OYER AND TERMINER,

Wednesday, 1st May, 1822.

Three black men, named Caldwell, Ross, and Cook, who were indicted for the Murder of Samuel Alwine, a boy about 8 or 9 years of age, were put upon their trial.

It appeared in evidence, that on the 2d of October last, between 7 and 8 o'clock in the evening, just as the mother of this child was shutting the win-

dow, a black man rushed in and knocked her down with an iron bar which he had in his hand; he then knocked down her daughter, a young married woman, far advanced in her pregnancy, and afterwards struck the boy on the head with the same instrument; the two women were severely injured, the daughter was senseless for two weeks, and the boy, whose scull appears to have been fractured, died of the wound on the 20th of October, eighteen days after he received the blow. It was alleged, on the part of the prosecution, that *Caldwell* was the man who struck these blows, and that the other two were outside, near the house, watching, and, of course, aiding and assisting, in the outrage and murder committed. The evidence of the mother and a variety of other testimony was given, accompanied by circumstances, to prove the case, on the part of the Commonwealth, which was encountered by testimony, on the part of the prisoners. The prosecution was conducted by Mr. Kittera, and the defence by William M. Meredith, Thomas Dunlap, and James C. Biddle, Esqrs. The prisoners' counsel insisted that there was no sufficient proof of the identity of either of the prisoners, and that the offence committed amounted only to *Murder in the second degree.* To their arguments Mr. Kittera replied in a concluding address of about an hour, distinguished for its uncommon eloquence and forcible reasoning, especially on the *facts* and the several links in the chain of testimony, tending to bring the charges home to the prisoners.

Judge Hallowell, President, instructed the jury that it was the decided opinion of the Court, that the man who *struck these blows*, whoever he was, was guilty of *Murder in the first degree*, and that the two men who watched on the outside were guilty of aiding and abetting him, and were *principals in that offence and guilty in the same degree;* that as to the *identity* of either or all of the prisoners, as connected with this transaction, it was left to them, as a question of fact, which it was *their exclusive province to determine*, that although it was their *duty* to be guided by the opinion of the Court, *in point of law*, yet that they had the physical power of deciding, if they chose to exercise it, *both the law and the fact*, and that if they entertained any reasonable doubts, with respect to either, their safest course would be to give them an operation in favour of the prisoners.

The jury retired at about half past nine o'clock in the evening, and the Court adjourned till eleven, at which time they returned and declared they could not agree; they were sent out again, and the Court adjourned till *eight* on Thursday morning, at which hour they again returned, said they had been *up all night without sleep*, and after every effort found it *impossible to agree*, and that they *never should agree;* they were, however, sent out again, and did not return into Court till one o'clock P.M. when they declared that they never could unite in opinion, and one gentleman said he would perish before he would agree to a verdict which he deemed contrary to his oath and his conscience. The jury declared that with respect to the two prisoners, *Ross* and *Cook*, they were *agreed*, and *ready* to *give* their *verdict*, but the Court would not receive a partial verdict; with respect to *Caldwell* they said they all agreed as to his *identity*, and that he was the man who struck the blows on the woman, and killed the boy, but they could not all agree that his crime was Murder *in the first degree*, some of them deeming it Murder *in the second* degree.

The Court, *after much reflection*, and on consideration of *the modern cases* adjudged on this subject, especially the case of The People *vs.* Robert M. Goodwin, decided in New York, in August, 1820, discharged the jury, and it is expected that upon the reason and authority of these cases, the prisoners will be again tried at the next Court of Oyer and Terminer, which will probably be held in the fall by the judges of the Supreme Court.

Immediately after the opening of the Court on that morning, Mr. Meredith stated, that he had to call the attention of the Court to a gross offence against public justice, and one of the most flagrant contempts of the Court that had ever come within his knowledge, and perhaps within that of their Honours. That it must be within the recollection of the Court, that during the last week the trial of an indictment for murder had taken place, in which Caldwell, Ross and Cook were defendants. That upon that trial the Jury had been charged with the evidence, had gone out, had remained together for about fourteen hours, when the Court had thought proper to discharge them without their having given a verdict. That yesterday another case was brought on against the same defendants, which the Court postponed on account of the excitement existing against the prisoners, in consequence of the knowledge of the circumstances of the former trial. That it could scarcely have been expected after this, that any printer would publish an account of the former proceedings; but that he held in his hand Poulson's paper of that morning, which contained a report of those proceedings, partial, garbled, and in material particulars false. That the circumstances *against* the prisoners were stated, while those which would operate in their favour were either suppressed or misrepresented.

Judge Hallowell asked Mr. Meredith what motion he intended to found upon these circumstances; Mr. Meredith replied, that he should, in the first place, move for an attachment against the printer; Judge Hallowell replied, that clearly under the act of Assembly they had no power to grant it. Mr. Meredith said, that he would proceed with his address to the Court, and conclude with another motion.

He went on to comment on the report: he observed, that it was stated, that the daughter (Mrs. Shellum) had been senseless for two weeks from the blows which she had received, whereas it was in evidence that she was in that state only two

days; it was stated, "that the Jury had declared with respect to the two prisoners *Ross*, and *Cook*, they were *agreed* and ready to give their verdict." That the Jury had not named either of the prisoners *to the Court*, and if any thing was asserted on the authority of the private declarations of the Jury, what but a malignant motive could have induced the suppression of the fact, that the verdict agreed upon was a verdict of *acquittal?* That the report went on to state, "that with respect to Caldwell, they said they all agreed as to his identity, and that he was the man who struck the blows on the woman and killed the boy, but that they could not all agree that his crime was *murder in the first degree;* some of them deeming it murder *in the second degree.*" Insinuating that but a small part of the Jury were of opinion that the crime was murder in the second degree; whereas, in point of fact, *eight* (two-thirds) of the Jury were of that opinion, while only four coincided with the Court, in thinking it murder of the first degree. That these misrepresentations were gross enough, but that the writer had offered a still grosser indignity to the Court, by putting into the mouth of his Honour, the President, a charge which was not law, and which contained in itself palpable inconsistencies and absurdities. The Court were made to tell the Jury, "That although it was their *duty* to be guided by the opinion of the Court *in point of law*, yet that they had the physical power of deciding, if they chose to exercise it, *both the law and the fact*, and that if they entertained any reasonable doubts *with respect to either*, their safest course would be to give them an operation in favour of the prisoners." That no one who had attended the trial in question could have forgotten, that when the Jury came in at half past ten o'clock, his Honour had expressly told them, that they had the *right* to judge of both the *law* and the fact; that it was absurd to assert at this day, that a Jury, in a criminal case, had not a right to judge of both the law and the fact; but that to tell a Jury that it was their *duty* to be guided by the opinion of the Court in point of law, and yet that if they entertained a *reasonable doubt* as to the law, they would be more safe in giving it an operation in favour of the prisoners, was flat nonsense. If it were *the duty* of the Jury to be guided by the Court in point of law, and the Court had positively declared the law to them, how

could they possibly entertain *a reasonable* doubt on the subject? He concluded by moving the Court to instruct the Attorney General to indict the printer. The Court denied the motion, and the President stated to this effect, that he saw no impropriety in the publication of what was done publicly—he knew of no law to the contrary, and that this did not appear to him to be other than a fair statement. Mr. Biddle said that it was a matter of some importance, that it should be known, whether the law sanctioned the publication of the proceedings in a capital case, which was depending, and to be tried again by another Jury.

The Attorney General then directed the same defendants as in the preceding case, to be put on their trial for Burglary. Mr. Biddle moved for a postponement, on account of the excitement already existing, and the addition to it occasioned by the partial, erroneous, and false account of the former trial in the morning's paper. The Court refused to grant this motion. The prisoners' counsel then stated, that it would be their duty to protect the interests of the prisoners by all the impediments to an *immediate* trial which the law allowed. The Court intimated that they understood it, and acquiesced. The jurors were called and severally challenged, until the panel was exhausted. The Attorney General then directed Cook alone to be put on his trial. Mr. Dunlap objected. He urged that this indictment had been found at the last Court of Oyer and Terminer, against these three prisoners and one Emery—that Emery had been arraigned, tried, and acquitted at that Court—that the other three, although at that time, and ever since, in prison, had not been arraigned until that morning, immediately before their trial was called on—that it was therefore not legal to try them on that indictment—that law and fairness required, that when several prisoners were charged in one indictment, with the same offence, they should all be arraigned together, as soon as possible after the bill was found against them. And he objected to trying him now, because he and the other prisoners had already challenged all the jurors, and had thereby manifested their unwillingness to commit themselves to the charge of these jurors as unbiassed men. The Court directed the trial to proceed against Cook alone. The first juror called

was challenged, and examined on his *voire dire*, whether he had formed or expressed an opinion on the prisoner's case. He replied in the negative. The challenge for cause was overruled. The juror was then peremptorily challenged. Judge Hallowell asked if the prisoner's counsel had any right to call the jurors up and examine them. He was informed they had, and acquiesced. The next juror called was challenged to the favour; Mr. Meredith asked that triers might be appointed in the usual manner. The Court having been informed by the prisoner's counsel what was the proper mode of proceeding, triers were appointed and sworn; the juror was by their verdict pronounced to be indifferent; another juror was called and challenged as before. The Court expressed an opinion, that the triers had better be sworn generally to pass on all such cases as should come before them. Mr. Meredith suggested that this was not according to law. The Court said they thought it had better be done. Mr. Meredith intimated, that it was a matter of little moment—the Court might do as they pleased. The triers were sworn generally. A number of jurors were called, challenged to the favour, passed upon, and at the usual hour the Court adjourned until half past three o'clock in the afternoon.

The Court met at half past three o'clock; the challenging of the jurors proceeded. Several jurors were called, challenged to the favour, passed upon, and pronounced to be indifferent, when Mr. Biddle asked the Court to charge the triers on a point of law—they did so; he requested the President to explain a part of his charge, which he refused, saying, "We have charged, and there is an end of it." One of the jurors, who was challenged to the favour, being asked if he had a bad opinion of the prisoner, replied he had, from having heard the publication read in Court. Judge Hallowell asked him if he had seen that publication any where else; he answered no. Mr. Meredith addressed the triers, observing that he felt it his duty to do so in consequence of what had been thrown out in the morning, and of the inquiry which had lately come from so unexpected a source. He then proceeded to remark on the publication in Poulson's paper of that morning. The juror was passed upon by the triers, and the calling of the jurors proceeded. A juror was called, and asked by Mr. Meredith, whether he was on the

former trial. He replied that he was not. He was then asked if he felt any bias against the prisoner. He answered, he believed him to be an old convict. He was again asked the same question, and replied—I have more against you. Mr. Meredith asked the juror what he meant; he answered that he did not think that he and the other counsel had treated the jurors well. Mr. Meredith said to the Court, he presumed they would not pass the insolence of the juror unnoticed. Judge Hallowell replied, that he did not hear what he had said. Mr. Meredith repeated the question and the juror the answer; Mr. Meredith said, "Do the Court hear that?" Judge Hallowell replied, that they did not hear. Mr. Meredith said it was their duty to listen, and not to suffer the conduct of the juror to pass without remark. The Court persisted that they did not hear, and asked Mr. Meredith to repeat what the juror had said. Mr. Meredith said, the Court must be aware how extremely unpleasant it was for counsel to be called upon by the Court, to repeat offensive words which had already been twice spoken in the presence of the Court itself, but that he would again ask the question, that he might be sure that the Court heard the answer. He did so, and the juror replied—"Why, I think the Jury have reason to complain of their treatment, being kept here all day." Mr. Biddle then rose and stated what the juror had previously said, and moved, as a principal challenge, that the juror be set aside; he considered his open and avowed bias against the prisoner's counsel, as sufficient cause. The Court intimated that this was out of time, as the triers had not passed upon his case. The triers pronounced him to be indifferent, and Mr. Biddle renewed his motion, and enforced it by some brief remarks. The President said, "It is clearly no cause of principal challenge." Mr. Meredith then said, "I thank my God that we can challenge peremptorily and do ourselves that justice which the Court deny us! I have never known any court of justice guilty of so gross a violation of their duty as this Court, in refusing to punish the insolence of a juror to counsel in the discharge of their duty." Judge Hallowell said, "Take care, Sir, we will punish you." Mr. Meredith replied—He would take care, that he was regardless of consequences, and prepared to meet them; and if he had been guilty

of any offence, the Court might punish him. Judge Hallowell reiterated his threat, and Mr. Meredith his reply.

Mr. Biddle rose and said, that he perfectly coincided in the views of his colleague; that a Court which threatened, and trembled as it threatened, was worthy of the laughter of the by-standers. Excitement then prevailed on all sides. Judge Ferguson said, that he had never witnessed such a scandalous farce—that the prisoner's counsel had been endeavouring all day by every subterfuge to screen these men from justice, &c. Mr. Biddle said, that he thanked his God, there was a tribunal above judges, who could punish them when they subverted the laws and insulted the feelings and trampled on the rights of counsel, in the independent discharge of their professional duties. Judge Hallowell stopped Mr. Biddle. After a short interval he stated, that the case might proceed—that the Court would not prejudice the case of the prisoner by depriving him of his counsel, but that when this trial should be over, the Court would, upon deliberate reflection, take proper measures to vindicate the majesty of the law. The trial then proceeded and was concluded. The Court adjourned till half past three o'clock the next day.

The Court met on the eighth day of May, at half past three o'clock: all the Judges were on the bench. The Attorney General directed Caldwell, and Ross, to be put on their trial for the same burglary, and a Jury to be called. Mr. Dunlap, Mr. Biddle, and Mr. Meredith, prepared to try the case accordingly. Judge Hallowell directed the Attorney General not to proceed. After a short interval of silence he said, the Court had a disagreeable duty to perform, that they had the day before, from two gentlemen, members of the bar, received a high affront. Mr. Biddle rose and attempted to speak; Judge Hallowell ordered him to sit down, saying, that by hearing any thing they would expose themselves to a fresh insult, and that they were determined not to do this. He then proceeded, when Mr. Kittera stated to the Court, that he understood the gentlemen requested the presence of their counsel. An answer addressed to Mr. Kittera was given, which was not heard by either Mr. Biddle or Mr. Meredith; and Judge Hallowell immediately went on, without a pause, to observe, that it was an insult not to be

borne; that if they were to bear it they would sink to the lowest point of degradation. He expressed personal friendship and esteem for both the gentlemen; said he was perfectly cool; that the Court had maturely deliberated, and went on to pronounce sentence as follows:

"This Court, on full consideration, do adjudge, that William M. Meredith, and James C. Biddle, Esqrs. counsellors at law, and officers of this Court, be committed to prison in the Debtors Apartment of the city and county of Philadelphia, until the first day of June next, or until discharged by the legal authority of this Court, or by due course of law, for a high contempt by gross misdemeanor, in the presence of this Court, obstructing the administration of justice."

At the conclusion of the sentence he said, the Court would at the meeting of the Court of Common Pleas, take into consideration the propriety of striking their names from the roll of that Court, and all other Courts of which they were the Judges; Mr. Biddle rose and said, "I pray," Judge Hallowell said, "Sit down, sir, we will hear nothing;" Mr. Biddle persisted to claim a copy of their sentence; Judge Hallowell said, "You shall have it." Mr. Meredith rose with the intention of demanding as a right, that before the Court inflicted a further sentence, which he deemed illegal, they should hear Mr. Biddle and himself in person or by their counsel: Judge Hallowell refused to hear him at all, saying, "Sit down, sir, we will not hear you, if you attempt to proceed we will increase your sentence." Mr. Meredith said, "If the Court are determined not to hear us we cannot help it." Judge Hallowell repeatedly ordered the Sheriff to carry the sentence into *immediate* execution, and to take these gentlemen into custody, which was done.

On the 13th of May, the Court of Common Pleas met, and Judge Hallowell, the President, delivered an address, of which the following is a copy, furnished by his order to one of our friends.

"On the 7th instant, the Judges of this Court, while holding the Court of Oyer and Terminer and General Jail Delivery, for the city and county of Philadelphia, were grossly affronted by James C. Biddle and William M. Meredith, Esqrs., attornies and counsellors for this Court. Both of them conducted them-

selves during most of the day, in a haughty, overbearing, and impetuous manner; offending the Court, and misbehaving themselves towards the gentlemen of the Jury, by putting interrogatories to them in a rude and unbecoming manner. Mr. Meredith, when a juror was challenged for a cause assigned by him, and the Court decided it was no cause, addressed the Court in an angry tone and with a fierce countenance, nearly as follows, viz: 'Then I thank God that I have one remedy left; I challenge him peremptorily; and I must say, that in the course of my short experience, I never witnessed so shameful a decision in a court of justice.' The President of the Court then said, We shall at a proper time notice and punish such conduct; to which Mr. Biddle replied, 'Punish it then. A Court who sits trembling in its seat, threatening what they are afraid to execute, is deservedly the object of laughter to the surrounding multitude,' or words to that effect. On deliberation, the next day they were committed to prison for a contempt of that Court, until the first of June next, where they now are in execution of that judgment. It is essential that the dignity and character of the Judges of this Court should be maintained, as they, in their official capacity, represent the majesty of the laws. If the dignity of the law is not sustained, its sun is set never to be lighted up again. It is necessary that those gentlemen should be prevented from again appearing before the Court, until they have had time and opportunity to cool, and until there may be reason to hope that they will conduct themselves with decency and propriety. They and some others, seem to have lost all respect for their superiors in age, in weight of character, and for those in official stations. While we know and respect the rights of the bar, we are determined to exact from all its members, the respect due to the representatives of the law; most of them we are happy to say, act in such a manner, as to entitle themselves to our approbation and friendship, and we trust in future we shall have no cause to complain of the conduct of any.

"May 13th, 1822."

In addition to the above, which as stated, is the copy furnished to one of our friends, the Judge said, that the Court

would deliberate whether we should be stricken from the list of attornies until readmitted on proper application, or merely suspended for a limited time; that the Court would not decide this until the next Wednesday, and in the mean time would hear what any of our friends might have to offer. And on the next Wednesday, the President delivered another address, maintaining the right of the Court of Common Pleas, and of all the other Courts, to strike us from the roll, for this offence, if they thought proper to do so; and declaring that if the Court of Common Pleas did not take that step, their forbearance must not be ascribed to any want of spirit, nor must it be thought on that account, that they had threatened what they were afraid to execute.

Such were the circumstances attending this transaction. We ask a candid and attentive perusal of the foregoing narrative, not doubting that such a perusal will convince our readers, that the whole affair was produced by the culpable and unjustifiable conduct of the Court itself. We consider the publication in Poulson's paper, and the remarks made upon it by us, as the immediate foundation of the peevishness and ill humour, which the Court displayed throughout the day. That article, we had no doubt at the time, from much internal and some extrinsic evidence, was written by the President of the Court himself; and we think we have since ascertained the fact, beyond the possibility of dispute.

On the 9th of May, we wrote to Mr. Poulson a note, of which the following is a copy.

"Sir,

"We request that you will furnish us with the name of the author of the report of the case of the Commonwealth vs. Caldwell, Cook and Ross, which appeared in your paper of the 7th instant. This application is made in this form, in consequence of a verbal application having been previously made, which was not successful. We desire that your answer may be in writing.

"Yours, &c.

(Signed) "James C. Biddle,

"W. M. Meredith.

"*Zachariah Poulson, Esq.*

"May 9, 1822."

To this we received, on the next day, the following reply.

"GENTLEMEN,

"Although I do not understand why a written answer is required from me, after my explicit refusal to communicate the name of the author of the report alluded to in your letter of yesterday; yet, I have no difficulty in repeating, that I cannot, without a violation of personal confidence and a breach of established rules, give you the information you request.

"The publication is deemed a correct report of what took place in a court of justice, before a numerous audience: in having published it, I have done no more than I had a legal right to do. I cannot aid in any measure that shall impair the liberty of the press, as secured by our constitution and laws.

"Yours, &c.

(Signed) "Z. POULSON.

"*James C. Biddle, and*
William M. Meredith, Esquires.

"May 10, 1822."

On the 3d inst. we addressed to Mr. Poulson the following note.

"Philadelphia, June 3d, 1822.

"SIR,

"On the 9th of the last month, we requested you to give us the name of the author of a statement in your newspaper of the 7th of May, relating to the trial of Caldwell and others in the court of Oyer and Terminer, and by your note of the 10th, you refused to comply with the request. Circumstances induced us at that time to defer any further communication to you.

"The propriety of the reasons urged by you for this refusal, we do not mean to discuss; but as they do not seem to preclude a further reference to you, for the purpose of ascertaining who is not the author, and as you cannot but feel disposed to relieve any person from a suspicion which is unjust, we again present the subject to your attention, premising that it is not our design to pursue the inquiry in regard to any other than the gentleman hereafter named. We at the same time think it proper to say, that, if you decline answering at all, or give any other answer

than a simple negative, we shall feel warranted from Mr. Poulson's character, in believing that suspicion in this case cannot be removed, because it is not unjust. We request then to know whether the author of that statement or report was not John Hallowell, Esquire, the President of the Court of Common Pleas?

"Respectfully, your obedient servants,

(Signed) "JAMES C. BIDDLE,

"W. M. MEREDITH.

"*Zachariah Poulson, Esq.*"

To this we have received no answer whatever; and we think this circumstance of itself conclusive as to the fact of Judge Hallowell's being the author of that statement; because on no other ground can the conduct of Mr. Poulson on this occasion be reconciled with his known character. Admit that he could not give us the name of the author, without a breach of personal confidence, as was stated by him in his answer to our note of the 9th of May. Here was an inquiry made with respect to one gentleman, and a stipulation that we would not extend that inquiry to any other whatever. Suppose then for a moment that Judge Hallowell were not the author, could there be any breach of confidence in Mr. Poulson's saying so? Let it be remembered that this was not the case of a suspicion resting on two or three,—where, if one were exonerated, it might tend to increase the suspicion against the rest.—We suspected Judge Hallowell alone, and we further explicitly gave Mr. Poulson to understand that no inquiry would be made in regard to any other individual. To have said then that Judge Hallowell was not the author, if the fact had been so, would have given no clue to the discovery of the real author,—could have involved no breach of confidence,—and could have been forbidden by no one feeling of honour or policy. That Mr. Poulson should refuse to vindicate an individual from an unjust suspicion, when it was in his power to do so,—when he might have done it without any breach of confidence, and without any danger to the person who had reposed a confidence in him,—and when indeed he was called upon to do so by every principle of honour, is entirely irreconcileable with that gentleman's

known and established character for probity and integrity. It is impossible that he should so have acted, and we should have no hesitation in drawing from this circumstance alone, the conclusion that our suspicion was not unjust. Not satisfied however with even this strong evidence of the fact, we determined to give Judge Hallowell himself an opportunity of removing the suspicion which rested upon him, and to receive implicitly his simple denial of the fact as acquitting him altogether from the charge.

With this view we made to him the following communication, immediately on his return from Westchester.

"SIR,

"Regarding the statement in Poulson's paper of the 7th of May, relating to the trial of Caldwell and others, and the remarks made by us upon that statement, as the origin and source of those feelings which led to our commitment to prison by the Court of Oyer and Terminer, on the 8th of the same month,—we are desirous of knowing from the best authority, by whom that statement was written. We believe it to have been written by you,—but with a view of ascertaining the fact beyond question, we sought to obtain from Mr. Poulson himself the name of the author. This he refused to give us, and to a subsequent request, made on the 3d inst., that he would inform us whether you were not the author, we have received no answer.

"Under these circumstances we think it best to communicate directly with you, upon this subject, which we feel to be highly important to us, and which we think cannot but be interesting to yourself. We therefore take the earliest opportunity after your return to town, of asking you, Sir, whether you were not the author of the statement which appeared in Poulson's paper of the 7th of May, relating to the trial of Caldwell and others in the Court of Oyer and Terminer?

"You will excuse us for the remark, that we cannot anticipate any but a frank and sincere answer; for while we distinctly promise to receive such an answer as authentic,—it will be obvious to all the world, that an answer of any other description, or no answer at all—whatever may be the cause alleged for it,

can be reconciled with nothing but a connexion with that paper, which it is not thought discreet to avow.

"We have the honour to be,

"Your obedient servants,

(Signed) "JAMES C. BIDDLE,

"W. M. MEREDITH.

"*John Hallowell, Esq.*

"*President of the Court of Common Pleas of the County of Philadelphia.*

"Philadelphia, June 14, 1822."

To this note Judge Hallowell has not thought fit to make any reply; and his omitting to answer such a communication, and to deny such a charge, can arise only from his consciousness that he could give no other than an affirmative reply. We submit to the judgment of our readers, whether this conduct does not amount to an avowal by Judge Hallowell, of his having been the author of the publication in question? We feel ourselves authorized to consider this fact as established.

To publish during the pendency of a judicial proceeding, any account of that proceeding which may tend to prejudice the public mind against the parties, is highly improper and illegal; and if the account be garbled and incorrect, the offence against law and propriety is thereby increased. The law on this head is well settled, and is denied we believe by no professed lawyer, with the exception of the presiding Judge of the Court of Oyer and Terminer. Since however he has denied it, and has said, "that he saw no impropriety in the publication of what was done publicly—that he *knew of no law* to the contrary"—we will cite a few of the cases in which the principle is distinctly and lucidly exhibited by Judges of solid learning and of discerning minds—who knew the decisions of the law, and understood its principles. In 2d Atkyns, 469, upon a motion against two printers for a contempt of Court in publishing a libel upon the parties in a suit, Lord Chancellor (HARDWICKE) says—"Nothing is more incumbent upon Courts of justice, than to preserve their proceedings from being misrepresented; *nor is there any thing of more pernicious consequence, than to prejudice the minds of the public, against persons concerned as parties in causes, before the cause is finally heard.*"

And again, in the same case (p. 471.)—" There are three different sorts of contempt. One kind of contempt is scandalizing the Court itself.—There may be likewise a contempt of this Court in abusing parties who are concerned in causes here.—There may be also a contempt of this Court, *in prejudicing mankind against persons, before the cause is heard.*" After mentioning a case, Lord Hardwicke proceeds thus—" There are several other cases of this kind; one strong instance, where there was nothing reflecting upon the Court, in the case of Captain Perry, who printed his brief before the cause came on; the offence did not consist in the printing, for any man may give a printed brief, as well as a written one to counsel; but the contempt of this Court, *was prejudicing the world with regard to the merits of the case, before it was heard.* Upon the whole there is no doubt but this is a contempt of the Court."

In Oswald's case (1 Dall. 319.) the principle was distinctly laid down by the late learned C. J. M'Kean.—" Upon the whole, we consider the publication in question, as having the tendency which has been ascribed to it, that of *prejudicing the public* (*a part of whom must hereafter be summoned as jurors*), *with respect to the merits of a cause depending in this Court*, and of corrupting the administration of justice: we are therefore unanimously of opinion, on the first point, that it amounts to a contempt." And in the case of Hollingsworth *vs.* Duane (which is reported in Wallace, 100.), the Court express themselves thus—" The offence was denominated a contempt of the Court, but it did not follow that the Judges must be attacked; it was equally a contempt when pending the cause, the party, his witnesses, or the jurors are reflected upon; or indeed, *if the publication is only calculated to influence the decision of the controversy;* the degree indeed may vary." And the present excellent and learned Chief Justice of Pennsylvania, in passing sentence on that occasion, said, " If therefore the trial by Jury is to be preserved; if the rights of suitors are to be protected, touching their dearest interests, of property, life, or character; *Courts of justice must prevent all discussions, all interference, or reflections in newspapers, while causes are depending.* This is equally the privilege and security of both parties; and the support of it is the common cause of every virtuous man in the

community." And yet the President of the Court of Oyer and Terminer "could see no impropriety in the publication of what was done publicly, and knew of no law to the contrary!"

Here was a proceeding still pending. The Jury impanelled to try these defendants, had been discharged without verdict, and the prisoners are to be again tried for their lives. The publication was false in fact, and directly calculated to influence the public mind against the defendants; and therefore would have been, even if made under ordinary circumstances, a high offence. But to publish an inaccurate, false, partial account of a proceeding still pending, immediately after the Court had declared that the circumstances of that proceeding were already too extensively known—that the course of public justice was endangered by the excitement arising from that knowledge—and that the prisoners were in peril of condemnation—not from the actual evidence of their guilt, but from the violence of popular prejudice—to publish at such a moment, a garbled and incorrect report, the direct effect of which was to increase and perpetuate the excitement already existing, and to render it more fierce and more universal—was an offence so enormous, that no Court, possessing the slightest regard for the first principles of justice, could have refused to pursue the perpetrator of it with all the penalties which the law allowed, and with every public and open expression of indignation. We doubt not that in any other case, the Court of Oyer and Terminer would have fired at the mention of such an outrage. The crime was great in itself, and there was but one possible circumstance of aggravation. It was that this flagrant violation of public justice and private rights, should have been committed by the very Judge who was bound by his oath and his station to punish such an offence in others. By what motives he was urged, we know not, nor pretend to know. Whether he was impelled by the desire of letting the world know that he and his associates were trusted with the lives of their fellow citizens—or whether led on by the mere ambition of seeing his name in the columns of a newspaper—or whether he acted under the influence of some other motive, must be left undetermined by us. The effect upon our clients was the same in either case; the official misdemeanor was the same in either case; for inordinate vanity, and the thirst for ephemeral noto-

riety, which are but ridiculous in a private individual, become criminal when they lead a Judge to forget his dignity, and to disregard his most sacred and imperative duties. The injury to our clients was completed. We thus found the community arrayed against them, and the Judge before whom they were to be tried, leading and aiding the popular cry.

Under these circumstances, was any other course open to us than the one we pursued? Were we not forced to hazard the favour of the Bench, in the discharge of our duty to our clients? We might indeed have courted the smiles of the Judges, and preserved the good humour of the audience, but it must have been by the desertion of our most solemn and positive duties as advocates. We might have advanced our personal interests with the Court, and sought our personal advantage from the public, by leaving those who had confided their lives to our protection, to be swept away by the stream of popular prejudice and judicial rancour. We might thus perhaps have saved ourselves from the persecution of the Court, and from the ill will of a portion of the community; but we should have incurred a severer penalty. We should have despised ourselves, and felt that we deserved the frowns, the contempt, the indignation of our fellow citizens. We had no hesitation in our choice. Had we profoundly revered the Court, and the individuals who composed it, we should have disdained to propitiate them, by offering at their shrine our own honour and integrity, and the liberties and perhaps the lives of our clients.

What then was to be done? Here was an offence committed, fatal to public justice and deeply injurious to our clients. It seemed necessary to give a public and immediate check to the false impressions which the publication had spread; and this could be best done by addressing the Court. It is true an act of Assembly had taken from the Court the power of punishing such an offence in a summary manner; but that act had not, by altering the mode of punishment, lessened the offence itself; and we therefore determined to bring the matter openly before the Court; to exhibit the true character and injurious effects of the publication, and to obtain a postponement of the case, or at least an opportunity of publicly and strongly protesting against the injustice which had been practised against our clients. What

would probably have been the conduct of a judge influenced by proper feelings, under such circumstances? He might either have bound over the offender,—a course not unusual, where offences come within the immediate knowledge of the Court; or he might have expressed his disapprobation of the measure and his strong sense of its impropriety, although it were no longer punishable by attachment,—or he might have contented himself with a simple refusal to take any step whatever in the matter. But could he with any regard to common justice, have said that there was no impropriety in such an offence? Could he with any regard to his legal character, have said that there was no law against it?

From our knowledge of the circumstances, we had indeed little expectation that the Court would in this instance interfere to punish or to reprimand the immediate offender; and perhaps this was the only case in which we should not have been surprised and confounded at hearing a Judge declare from the Bench, in speaking of such a crime, "that he saw no impropriety in the publication of what was done publicly; that he knew of no law to the contrary, and that such a statement as the one then in question, did not appear to him to be other than a fair statement!" We had characterized the report fairly and openly, and with no more freedom of expression than it merited; and in this we firmly believe, consisted our real offence. This was the contempt (though we suppressed at the moment any personal application of it) which so aroused in the Court the sense of their dignity.

From this moment the feelings of the Judge were personally involved, and his personal resentment was variously manifested. We say that the personal resentment of the President Judge was variously manifested. It was shown throughout the day, by that contemptuous incivility of manner, which it is impossible to describe, and equally impossible not to feel. That it galled and irritated us we do not deny. How could it be otherwise? It was after this course of irritation, that the Court permitted a juror to treat with disrespect, the counsel in the discharge of their duty. They were called upon to punish the insolence of the juror. They refused to interfere, under the pretence that they had not heard. The question to the juror was again put; the insulting answer was again given. Still the Court were ob-

stinately deaf, and so far from punishing or even reprimanding the offender, that they sought to increase the insult, by requiring the counsel to repeat the offensive words which had been already twice spoken in their presence. The words *were* at length repeated to them, and even then, the Court inflicted not the slightest punishment, not the slightest reproof, not the slightest expression of disapprobation on the juror. Then it was,—when our clients had been refused that protection to which they were entitled,—when we had ourselves been treated with contumely, —when our rights had been denied to us,—because we had refused to shrink from the performance of our sacred duties to our clients,—because we had scorned to be guilty of the unmanly cowardice of deserting them at a moment when we were emphatically urged, by every principle of duty and of honour to protect them, and to resist at all hazards the torrent of prejudice which seemed about to overwhelm them,—then it was, that no longer able to suppress our indignation, we gave vent to that expression of our feelings, which has ostensibly brought upon us the vengeance of the Court.

We know that in this we offended against the law. We know that the dignity of the Bench ought to be regarded and supported; and we have always endeavoured so to conduct ourselves as not to incur the least suspicion of disrespect for those to whom the administration of justice is intrusted. For most of them we really feel a profound veneration, because we know that they deserve it.

But, even when transacting business in a Court for which they have the highest respect, there are sources of irritation to which members of the Bar are liable, and which cannot be perfectly understood by the audience. The zeal which it is their duty to exert in the cause of a client, of itself predisposes their minds to warmth. The perplexity of an intricate case—the difficulty of obtaining the simple truth from an obstinate, a perverse, or a prevaricating witness—these, and many others, are causes of excitement, which none but members of the Bar can appreciate. If to these be added a perplexing interference on the part of the judges,—even though that interference be in a polite manner and with good intentions,—it will vex the best regulated temper; and on such an occasion there will sometimes be

exhibited a warmth of manner and even the appearance of incivility towards a Bench justly entitled to universal respect and confidence. But a Court may, by manifestations of ignorance, and by a course of ill conduct, rudeness and oppression, render it impossible for counsel to preserve the appearance of a respect which they no longer feel; and if members of the Bar, whose feelings have been lacerated, and whose rights have been outraged by the Court, should in the excitement of the moment, pass the strict and rigid bounds of decorum,—who will say that their offence is entirely without palliation? It is true they must submit to the penalties of the law which they have violated;—but what ought to be the punishment? The first object of the Court on such an occasion should be to put a stop to the immediate disorder; the next, to vindicate its own dignity and prevent the recurrence of similar offences. Suppose a case of great rudeness on the part of members of the Bar, without the circumstances of violent provocation and equal rudeness on the part of the Court. What conduct might be expected from the Judge? He would probably order the offending counsel to stop. If they persisted in their violence, he would commit them to the immediate custody of the Sheriff; that step being in such a case absolutely necessary, as the only effectual means of arresting an obstinate and contumacious attack. If a sufficient apology were offered, no further measures would be necessary or proper on the part of the Judge; but, if not, he would proceed to suspend them for a limited time. Would not every purpose of vindication and example be answered by this course? The immediate disorder would be quelled; the dignity of the Court would be supported; the recurrence of a similar offence would be prevented; and surely to the offenders themselves, the suspension from that profession to which they had devoted their lives, and on the pursuit of which they had placed their hopes of advancement in character and fortune, would be an ample and severe punishment for any incivility or insubordination. But what course was taken in the present instance? Was it a case of violent indecorum, calling for immediate commitment? No: for the Court were so far from committing us, that they allowed us to proceed immediately in a trial before them. That trial was concluded, and the Court with apparent calmness unfortunately adjourned to the next afternoon. We say unfortunately, for the

"cool reflection and mature deliberation" in which the intervening day was doubtless occupied by the Judge, was productive of a very extraordinary paroxysm. Two or three hours after the affront had been offered to him, he had departed with at least apparent coolness; but, after the lapse of twenty-four hours, he reappeared, convulsed with anger—a painful and distressing spectacle. He gave no opportunity for an apology; on the contrary, though we repeatedly and in no disrespectful manner, endeavoured to obtain (the common privilege of the common felon) permission to say what we had to say before sentence was pronounced upon us, the Court violently refused to hear a word from either of us, under the pretence that by so doing they should expose themselves to "fresh insult." Perhaps the real apprehension of the Judge was that, if allowed to speak, we might deprive him of his revenge, by offering an apology too ample to be openly refused. Certainly the reason which he affected to assign, was a pretence, and a very shallow pretence; for, let it be remembered, that this dread of fresh insult was expressed twenty-four hours after the indecorum which the Judge was about to punish,—although he had, the very moment after it was committed, allowed us to proceed in the trial of the very case, the circumstances of which had produced it,—and although we had actually gone through that trial without any "fresh insult" to the Court.

Finally, he condemned us, for what was at most an indecorum to be immured in a jail for twenty-four days; thus dooming us to that imprisonment which our laws intend for felons, and the outcasts of society. Imprisonment is a disgraceful and debasing punishment,—which never can be proper or necessary in a case like the present. There never has been an instance, either in this country or in England, so far as our researches have extended, in which members of the Bar have been condemned to a protracted imprisonment, for a rudeness to the Court. And indeed, fatal will be the consequences, if the example now set, should be hereafter followed. Already every motive of interest, and the powerful influence of habitual deference, combine to produce a submissive deportment on the part of the Bar towards the Bench. Nothing but a strong and honest zeal can, in such circumstances, lead members of the Bar beyond the strictest

limits of propriety. But if, for an incivility, real or supposed, they are to be subjected to imprisonment,—if they are not merely to undergo the disadvantages which the ill will of the Court will always produce,—if they are not to be allowed to expiate their venial offence, even by suffering a suspension from the practice of their profession, but are to be deprived of their personal liberty, and confined in a jail for weeks, or months, or years,—how can it be expected that they will persist in that fearless and uninfluenced discharge of their professional duties, which is so essential to the interests of the individual suitors and of society at large?

Imprisonment in our case, was not necessary to the vindication of the dignity of the Court. But it was not the dignity of the Court that was to be vindicated. The affront to his Honour's literary character, arising from the criticisms on the publication in Poulson, was to be severely visited upon those who had offered it. The Judge upon the Bench was avenging the wrongs of the anonymous paragraph writer. And how did he avenge them? How was the sentence passed? Was it with any consideration of the circumstances attending the ostensible offence? Was it with any allowance for the natural ardour of junior counsel, deeply interested for their clients, and anxiously zealous in their defence? Was it with any allowance for the looseness of discipline which had characterized his own Court, where, if on the one hand the advocates had behaved rudely to the Bench, on the other hand, a Judge on that Bench had dared to charge those advocates with being guilty of "subterfuges," because they had persisted in the honest and fearless performance of their professional duties? No; the Judge considered none of those circumstances. He passed upon us, without remorse or mitigation, a sentence of which the severity is without an example in the judicial records of our country. Not content with this, he intimated that other measures would be taken; and having inflicted a punishment by which he hoped to degrade us, he threatened a farther punishment, which, as much as in him lay, would have starved us. He sought by the one to destroy our characters, and by the other to deprive us of our bread. Is this the moderation—is this the justice—is this the impartiality of the Bench? Do

these proceedings exhibit the reluctant steps of a Court obliged to enforce the sanctions of the law, against young men, who had been guilty of a slight and venial offence, and who possessed the friendship and esteem of the Court? Or do they not rather afford the painful spectacle of a Judge, who under the cloak of his judicial duties, seeks to indulge his personal feelings, and to wreak a deadly vengeance on the objects of his personal hatred? But his vengeance, we thank God, has not been effectual for our destruction. The severity of our sentence—the malignity with which it was pronounced—the fury with which it was repeatedly ordered to be enforced—affected us not. We have been persecuted, but we are not crushed; and we feel that our spirits are not to be broken by the unrelenting efforts of his Honour and his associates.

It might have been expected that the vindictive spirit, which had thus pursued us, would now have been satiated, and that we should have been permitted to pass the period of our imprisonment unmolested. But such expectations were vain. Our persecutor was not yet satisfied. We speak not now of his harangues at the corners of the streets—in the market-place—and in the public haunts; we speak not now of his alacrity, in besetting even his casual companions, with falsehoods and misrepresentations. We do not wonder that he should have endeavoured to support by an erroneous public opinion, a cause which could no otherwise be upheld. We have the satisfaction to find that these endeavours have failed, and we forgive him this attempt to injure us. We disregard the ill will of those whom we cannot esteem, nor do we fear the ill placed displeasure of an angry magistrate.

But his private exertions were not sufficient. We must now turn to the Address which was delivered on the 18th of May, at the opening of Court of Common Pleas, by the President of that Court—the same Judge who wields the mace in the Oyer and Terminer. We do not mean to criticise severely the minor inaccuracies into which he has fallen, or the confusion of his narrative, in the course of which he has transferred to one of us, words which fell from the other. But there are certain leading and prominent features in the case, which could not have been *misunderstood.* Thus if we had ourselves treated the Jury with

rudeness, it would have excused perhaps a retaliation on the part of one of them. So on the other hand, if the Court had comported themselves decorously towards us, that fact would prove that we had been guilty of an attack upon them, of which the circumstances would have afforded no palliation. Let us see what assertions the Judge has ventured to make openly and publicly on these heads. He says that both of us, "conducted ourselves during the day in a haughty, overbearing and impetuous manner, offending the Court and misbehaving ourselves towards the gentlemen of the Jury, by putting interrogatories to them in a rude and unbecoming manner." We deny the fact. We felt great respect for the gentlemen of the Jury, and we took frequent opportunities of expressing that respect. We were sensible that the course we were compelled to pursue was unusual, and calculated to produce irritation on the part of those gentlemen of the Jury, who were not acquainted with the grounds of our proceeding. We did not design to impeach in the slightest degree the integrity of a single individual on that Jury. We sought to guard against the effects of a bias which might operate upon their minds, unknown even to themselves. We saw that it was difficult for them to understand this, and were therefore *anxiously* polite, wishing to show by our manner that we had no intention of offending them. We appeal confidently to the gentlemen of that Jury, whether in a single instance either of us put an interrogatory to any one of them "in a rude and unbecoming manner."

How unfair is this attempt to enlist against us the feelings of the Jurors, and through them of the community!

But the Judge goes on—"Mr. Meredith, when a juror was challenged for a cause assigned by him, and the Court decided that it was no cause, addressed the Court in an angry tone, and with a fierce countenance, nearly as follows," &c. Here is a total suppression of the immediate provocation. That did not consist in the decision of the Court on the point of law, but in their refusal to notice the insolence of the juror; and it was so expressly stated by Mr. Meredith. Again, Mr. Biddle, and not Mr. Meredith, moved the challenge to the Court. Look at the object of these perversions; it was necessary that some previous occurrence should be stated, for it could not be believed that we

would, without all provocation, have made a violent attack upon the Court. But it would have been awkward for his Honour to mention the facts which really took place, since, with whatever ingenuity they might have been coloured, it would have been very difficult in detailing them, to conceal the misconduct of the Court. To get rid therefore of the embarrassment, he suppresses them entirely, and gives as the commencement of the affair, a motion which was made towards the close of it, and which was not made at all by the individual to whom he ascribes it. But how palpably absurd in itself is this groundless assertion! What!—Had we not in the previous week spent a day in trying a case before that Court? Had we not passed the whole of the immediately preceding day in that Court? How can it be believed that, after such ample experience, we could be surprised into an intemperance of expression, by any decision of that Court on a point of law!

To proceed—The President asserts that Mr. Biddle used the following expressions:—"A Court *who* sits trembling in *its* seat, threatening what *they* are afraid to execute, *is* deservedly the object of laughter to the surrounding multitude." No, indeed, we have not been so severely stricken with the rod of justice, for uttering so extraordinary a combination of words; but, we do think, that if his Honour had suffered the salutary corrective of another rod, in his earlier days, he would never have constructed such a sentence.

"*It is* (indeed) *essential that the dignity and character of the Judges of this Court should be maintained!*"

So much for the address itself—But what motive could have induced it? There was no judicial proceeding before the Court—nay, the harangue led to nothing. We believe, that it was at that time intended to strike our names from the roll; and, indeed, we are informed that something like a notice of that intention was pronounced by the Judge, together with an intimation that, in the mean time, any concessions might be offered.

We have no doubt that the address was composed, in order to prejudice the public mind, by the misrepresentations which it contained, and that the notice at the conclusion, was merely thrown out to catch the applause of the audience by an affectation of candour and fairness. One of our friends requested a

copy of the address, and a paper was handed to him by order of the Court, purporting to be such a copy. That copy is printed at page 14, of this pamphlet; and it will be seen by referring to it, that in that copy, the Court have suppressed all notice and intimation to us; the very part of the address which it was most material for us to be aware of, and most essential to the honour of the Court, that we should be scrupulously furnished with!

Are we not borne out by these facts in charging the Judge with vindictiveness? Does not almost every circumstance in his conduct afford the clearest and most decisive evidence of that vindictiveness?

If we ascribe to the President of the Court the intention of preventing any acknowledgment on our part, we ask if the circumstances do not irresistibly lead to that conclusion? Sentence was passed upon us with excessive heat and anger. We were peremptorily and repeatedly denied the right of addressing the Court. The President accompanied his refusal to hear us with the strongest expressions of his determination not to permit us to say any thing. All this appears at large in our statement. In what terms shall we characterize conduct so tyrannical? The right of being heard before condemnation and sentence, the dictates of humanity and of justice give to every offender. It is a chartered right of every man in this state. The robber and the burglar, hardened by the commission of many crimes, after conviction by a jury, is asked if he have any thing to say why sentence should not be passed upon him. This universal right was denied to our indiscretion, by a magistrate who introduced his sentence with expressions of friendship and esteem! So shocking a profanation of the terms has rarely been equalled. Their insincerity was obvious to the least sagacious of the bystanders. That under such circumstances no man of honour could expect, and none would make concessions, it is scarcely necessary to add. In charity to the President, we must presume it was intended that none should be made. He cannot have supposed us so humbled, as to make concessions to an insulting demeanor and arbitrary exercise of power. That a severity of punishment so excessive, inflicted in a manner so unfeeling, was not the proper result of offended dignity, it can require no argument to prove.

There were many degrees of punishment suited to offences of the kind committed by us, which would have been inflicted, if personal and vindictive feelings had not influenced the Court. A Court, anxious to maintain its dignity unimpaired, and to preserve its purity unsullied, never would have degraded the one and polluted the other. Punishments should always be in proportion to the offence committed. When they are greater than is necessary to attain the purpose for which they were designed, they are oppressive and tyrannical. Let us then inquire if there was no punishment short of confining us in a jail for nearly a month, adequate to the attainment of every fair object. It may not be improper here to state, that larcenies and other felonies are often punished, by the same Judges that sentenced us, with imprisonment of no longer duration! If just considerations had governed the Court, a fair opportunity would have been afforded us to atone for our offence by a respectful apology. The dignity of the Court would have been upheld, and an ample punishment imposed,—a punishment especially adapted to the nature of our offence. An apology is all that a generous and exalted mind would ever exact even for personal injury. Surely the maintenance of the dignity, and the support of the authority of the Court, could require no more. All that the law seeks is to vindicate its character, and to secure the administration of justice from obstruction. But, if we had not improved such an opportunity, when offered, then our appearance in Court for the remainder of the session might have been prohibited. This would have been a punishment addressed to us as professional men, and would have shown on the one hand, that the Court were prepared to maintain their authority and to punish aggression, and on the other, that a just regard for their official duty, uninfluenced by private feelings, had actuated them. If this had not been deemed an adequate punishment for contumacious disrespect, we might have been committed for a short time. A Court really dignified would have felt as well vindicated by imprisonment for an hour as for a month. The object is not to degrade the offender, or to punish him corporally,—it is the protection of the Court. A long imprisonment could never be necessary for this purpose. Where the Judges are men of real dignity of character, of profound learning and just views, rash

and tyrannical measures are never to be apprehended. It is only when power is lodged in the hands of men of no dignity of character, of slender learning and contracted minds, that danger is to be feared. But if it had been deemed necessary to rescue the Court, as well from past as present degradation, to impose on us an exceedingly severe sentence,—some regret, some sorrow would have been manifested, and not the most extravagant ebullitions of passion.

We cannot avoid, from the foregoing considerations, coming to the conclusion, that the Court, and particularly the President, were influenced as parties by personal resentment, and not by public motives. They have endeavoured at our outset in an arduous and honourable profession, to extinguish our hopes, to blight our prospects, and to deprive us of the means of gaining a subsistence, by sentencing us to a punishment intended as a disgrace, and to wound and mortify our feelings and those of our friends, and to leave a lasting impression. It was to have been hoped that judicial vengeance would have pursued us no further. We have already commented on the public address in another Court, and have characterized it in no harsher language than we conscientiously thought it merited. Our injuries were not yet consummated—the spirit of vindictiveness was not yet satiated. True, we were in a jail; but we were not humbled. Even this was taken advantage of; and whilst we were in confinement and deprived of the means of justifying ourselves, regardless of the dignity of his station, of manliness and of propriety, we find the same individual misrepresenting our conduct, assailing our characters, and impeaching our general deportment, by harangues in all places and to persons of all descriptions. Thus we have been pursued and persecuted, with a cruelty of which we are proud to say no example can be found on the records of any other American Court.

We do not intend to question the right of Courts to punish contempts by imprisonment. We have already considered the propriety of exercising it in cases such as ours. It may be essential to their existence that they should possess the power of inflicting summary punishment on those who insult their dignity and obstruct the administration of justice. It is all important, however, to the liberties of every American, that a power of so

arbitrary a nature should be exercised with great prudence, discretion and forbearance. That it should only be confided to men well instructed in the laws, of elevated character and liberal views. When placed in ordinary hands, it is a fearfully dangerous power. That which is our case to-day, may, if permitted to pass unnoticed, soon become that of many. It should be remembered, or rather it cannot be lost sight of, that Judges are not exempted from any of the frailties of other men. When private feelings seem to influence the exercise of their judicial power, the public safety requires that their conduct should be freely and critically investigated. If the sword of justice can be drawn and wielded by the arm of the law for the gratification of personal resentment, those blessings which we have ever believed the constitution and laws of our country have guaranteed to us are indeed illusory. If for too much warmth of manner and language, when carried away by a zealous discharge of our professional duties, we have been denied the right of being heard,—and instead of a punishment commensurate with our offence, we have been sentenced to one appropriated to felons, the author of our injuries having provoked the offence by a publication deserving not only of censure but of punishment,—then is the injustice done to us a small portion of the wrong to the community, which, as it may affect the rights of each American citizen, is alike the cause of all.

JAMES C. BIDDLE,
W. M. MEREDITH.

June 19, 1822.